IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.4480 OF 2005
IN
FIRST APPEAL NO.643 OF 1991

State Bank of India ...Applicant
V/s.
M/s.Auto Steel and Ors. ...Respondents.

Mr.Atul G. Damle for the Applicant.
Mr.J.Shekhar i/b M/s.J.Shekhar & Co.for the Respondent Nos.1 to 5.

CORAM: H.L.GOKHALE &
S.R.DONGAONKAR, JJ.
DATE : 25th April, 2006.

P.C.:

1. Heard Mr.Damle in support of the Civil Application and Mr.Shekhar for respondents no.1 to 5.

2. This Civil Application seeks a clarification with respect to the judgment and order which this Court had rendered in First Appeal No.643 of 1991. That judgment was rendered by the Division Bench consisting of Justice Patankar and Justice Gokhale on 9th June, 2001 and that is why Application is placed before this bench.

3. This Appeal No.643 of 1991 was heard and decided alongwith three other First Appeals, being No.397 of 1986, 398 of 1986 and 614 of 1986. Those three appeals were cross appeals between United India Insurance Company

Limited and others and Auto Steel Industries arising out of the judgment rendered by Joint Civil Judge Senior Division Pune in Special Civil Suit No.100 of 1982, 114 of 1982 and 210 of 1982.

4. It was the case of Auto Steel Industries that a fire broke out in the night of 1st October, 1979 and on the strength of insurance policy, it had filed the suits which came to be decreed to a large extent and that is why the Insurance Companies had filed their appeals. To the extent, claim was not entertained, Auto Steel Industries filed their cross objections.

5. The judgment rendered by the Division Bench recognised the merits in the submissions of the Insurance Companies and allowed their appeals in part. It was held that Auto Steel Industries was entitled to the claim of only Rs.4 lakhs with interest at the rate of 12% from the date of notice till filing of the suit and 6% thereafter. Now what has happened in the meanwhile, is that State Bank of India had filed its own suit against Auto Steel Industries for its claims and had obtained a decree in its suit. Amounts received from the insurance company were transferred to the State Bank of India. In view of the Insurance Companies succeeding in their appeals, and to see to it that the amounts which insurance company was

required to pay wrongfully, the State Bank of India was directed to redeposit the same and which has been credited to in the Trial Court. On redeposit of that amount, Insurance Companies were to get back the portion of that amount which, it was held, to be due to them and which was deposited on higher side as per the decree in favour of Auto Steel India.

6. Now what has happened is that State Bank of India had filed Appeal No.643 of 1991 against Auto Steel Industries in Special Civil Suit No.647 of 1984, in which it obtained decree in favour of the Bank. It was noted that after recovering the amount of Rs.29,92,258.33 from the insurance company, an amount of Rs.1,46,708.30 would remain recoverable. The trial Court had directed the amount be recovered in monthly instalments of Rs.1,000. This would take 15 years. This Court, therefore, set aside that direction. The Court, therefore, held that State Bank of India was entitled to recover balance amount of Rs.1,46,708.30 with 6% interest.

7. However, while giving the above direction, it was ignored that the amount recovered by the State Bank of India was directed to be redeposited as per the order in Appeals No.397 of 1986 and others. In the circumstances,

we only clarify that our order on First Appeal No.643 of 1991 dated 9th June, 2001 does not prevent the State Bank of India from executing the decree which it had obtained in Special Civil Suit No.641 of 1984 decided on 31st October, 1990 to the extent of Rs.29,92,258.33 with interest provided that it is within limitation.

8. Mr.Damle makes further statement that though State Bank of India has filed Recovery Application in D.R.A.T., it will withdraw the same. We note this submission.

9. The Civil Application stands disposed of.

(H.L.GOKHALE,J.)

(S.R.DONGAONKAR, J.)